

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1498 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

JADEJA KIRITSINGH PRABHATSINGH

Versus

STATE OF GUJARAT

Appearance:

Shri P.V. Hathi, Advocate, for the Petitioner

Shri A.G. Uraizee, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 06/12/96

ORAL JUDGEMENT

The order passed by the Deputy Collector at Rajkot (the Appellate Authority for convenience) on 30th August 1988 in Appeal No. 1 of 1988 as affirmed in revision by the decision rendered by the Gujarat Revenue Tribunal at Ahmedabad (the Tribunal for convenience) on

18th January 1991 in Revision Application No. TEN.B.R. 39 of 1988 is under challenge in this petition under articles 226 and 227 of the Constitution of India. By the impugned order, the appellate authority accepted the appeal against the order passed by the Mamlatdar and Agricultural Lands Tribunal at Rajkot (the First Authority for convenience) on 30th November 1983 in Ceiling Case No. 158 of 1976 declaring the holding of the petitioner herein to be surplus by 50 acres and 33 gunthas and also including in the surplus land one parcel of land bearing survey No. 60 admeasuring 32 acres 17 gunthas.

2. The facts giving rise to this petition move in a narrow compass. The petitioner appears to have filed the declaration in the prescribed form under the relevant provisions contained in the Gujarat Agricultural Lands Ceiling Act, 1961 (the Act for brief). That declaration was processed by the first authority. It came to be registered as Ceiling Case No. 158 of 1976. By his order passed on 24th December 1976 in the aforesaid proceeding under sec. 21(1) of the Act, the first authority declared the holding of the petitioner to be in excess of the ceiling limit by 41 acres 28 gunthas and included in the list of the lands to be surrendered as surplus one parcel of land bearing survey No. 60 admeasuring 32 acres 17 gunthas. Its copy is at Annexure A to this petition. It appears that it was taken in suo motu revision by the appellate authority by issuing the show-cause notice on 1st September 1982 under sec. 37 of the Act. It came to be registered as Revision Application No. 4 of 1982-83. By his order passed on 8th December 1982 in the aforesaid proceeding, the appellate authority set aside the order at Annexure A to this petition and remanded the matter to the first authority for his fresh decision according to law. Its copy is at Annexure B to this petition. After remand, the matter was heard afresh. By his order passed on 30th November 1983 under sec. 21 of the Act, the first authority declared the holding of the petitioner to be surplus to the tune of 50 acres 31 gunthas and declared certain lands to be surrendered as surplus to the tune of 50 acres 30 gunthas. Its copy is at Annexure C to this petition. The list of lands to be surrendered as surplus included the parcel of land bearing survey No. 60 admeasuring 32 acres 17 gunthas. The petitioner carried the matter in appeal before the appellate authority under sec. 35 of the Act. It came to be registered as Appeal No. 193 of 1984. By his order passed on 30th June 1984 in the aforesaid appeal, the appellate authority dismissed it. Its copy is at Annexure D to this

petition. It appears that the order at Annexure C to this petition was also carried in appeal by and on behalf of the State Government under sec. 35 of the Act. It came to be registered as Appeal No. 1 of 1988. By the order passed on 30th August 1988 in the aforesaid appeal, the appellate authority accepted it and deleted from the list of lands to be surrendered as surplus survey No. 60 admeasuring 32 acres 17 gunthas and the matter was remanded to the first authority for preparing a fresh list of lands to be surrendered as surplus after giving an opportunity of selection to the petitioner. Its copy is at Annexure E to this petition. The aggrieved petitioner carried the matter in revision before the Tribunal under sec. 38 of the Act. It came to be registered as Revision Application No. TEN.B.R. 39 of 1988. By its decision rendered on 18th January 1991 in the aforesaid revisional proceeding, the Tribunal rejected it. Its copy is at Annexure F to this petition. The aggrieved petitioner has thereupon invoked the extraordinary jurisdiction of this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure E to this petition as affirmed in revision by the decision at Annexure F to this petition.

3. Learned Advocate Shri Hathi for the petitioner is right in his submission to the effect that the appellate authority had no power or jurisdiction under sec. 35 of the Act to take up the matter for suo motu revision the order at Annexure A to this petition after expiry of the period of one year from its date. It transpires from the order at Annexure A to this petition that it was passed as early as on 24th December 1976. In view of sec. 35 of the Act, the record and proceeding could have been called for for the purpose of exercising revisional powers within one year from the date of the order. It transpires from the order at Annexure B to this petition that the record was received in the office of the appellate authority on 22nd August 1988, that is, nearly one year and 8 months after the date of the order at Annexure A to this petition. It appears not to have been called for by him. In that view of the matter, the appellate authority had no power or jurisdiction under sec. 35 of the Act to have taken up the order at Annexure A to this petition for any suo motu revision. The order at Annexure B to this petition can therefore be said to be without jurisdiction.

4. It however appears that the petitioner did not challenge the order at Annexure B to this petition at any point of time. It is too late in the day to uphold any

challenge to it at this stage after lapse of some 14 years from its date. Even this petition has been filed about 9 years after the date of the order at Annexure B to this petition. I think the belated challenge to the order at Annexure B to this petition need not be upheld.

5. Learned Advocate Shri Hathi for the petitioner is however on a firmer ground in his challenge to the order at Annexure E to this petition as affirmed in revision by the decision at Annexure F to this petition. The appeal preferred against the order at Annexure C to this petition by and on behalf of the State Government was hopelessly time-barred. No application for condonation of the delay in preferring the said appeal was made. Without condonation of delay, the appellate authority had no jurisdiction whatsoever to entertain the appeal on merits.

6. In this connection a reference deserves to be made to the ruling of this Court in the case of Manibhai Jivanji Desai v. State of Gujarat and others reported in 1994(2) G.C.D. 24. In that case, the Tribunal had entertained on merits a revisional application against the judgment and order of the appellate authority in appeal under sec. 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 though it was time-barred and no application for condonation of the delay in preferring the revisional application was made. In that context it has been held that unless the Tribunal condones the delay in preferring the revisional application before it under sec. 76 thereof, it has no jurisdiction to entertain such revisional application if preferred beyond the prescribed period of limitation. It has further been held that the Tribunal cannot be said to have impliedly condoned the delay in preferring the revisional application when it entertained it on merits. By analogy, the aforesaid decision of this Court will be applicable to the facts of the present case. The appeal by the State Government culminating into the appellate order at Annexure E to this petition was filed nearly 4 years after the date of the order at Annexure C to this petition. As pointed out hereinabove, no application for condonation of the delay in preferring the appeal was made. The appellate authority in that case could not have any power or jurisdiction to entertain the appeal unless the delay was condoned in view of the aforesaid ruling of this Court. The impugned order at Annexure E to this petition cannot therefore be sustained in law. The decision at Annexure F to this petition affirming the order at Annexure E to this petition will also fall to the ground on that account.

7. Since I am taking the aforesaid view of this matter, I have not thought it fit to deal with the submission urged before me by learned Advocate Shri Hathi for the petitioner to the effect that the order at Annexure C to this petition was affirmed in appeal by the appellate authority by the order at Annexure D to this petition, and as such no fresh appeal against the very same order could have been entertained by the appellate authority, more particularly when the respondents in the petitioner's appeal culminating into the order at Annexure D to this petition had filed neither cross appeal nor objected to any part of the order even if no cross-appeal was required to be filed.

8. Learned Assistant Government Pleader Shri Uraizee for the respondents has urged that, from the list of the lands to be surrendered as surplus, the land bearing survey No. 60 admeasuring 32 acres 17 gunthas was rightly excluded as it was acquired under the Land Acquisition Act, 1894 and the petitioner was paid compensation therefor. The petitioner has clearly averred in para 7 of this petition that, pursuant to the order at Annexure A to this petition, he had already surrendered the surplus lands including the aforesaid parcel of land bearing Survey No. 60 admeasuring 32 acres 17 gunthas. In that view of the matter, it could not have been put under acquisition under any enactment relating to land acquisition. It has further been averred in para 7 of this petition that the petitioner claimed no compensation for acquisition for the aforesaid parcel of land bearing survey No. 60 from the land acquisition authorities. It is his case that compensation for the acquired land was practically thrust upon him. In para 8 of this petition he has shown his willingness to return the amount of compensation thrust upon him in that regard. The aforesaid averments made in this petition have not come to be controverted by or on behalf of the respondents in any manner. No reply affidavit has been filed. In that view of the matter, there is no reason not to accept those averments. Learned Advocate Shri Hathi for the petitioner states at the Bar on instructions that the petitioner is ready even today to return to the Government the amount of compensation. The petitioner is directed to pay to the State Government the amount of compensation received by him for the aforesaid parcel of land bearing survey No. 60 admeasuring 32 acres 17 gunthas or any part thereof taken in acquisition by means of an account payee bank draft to be drawn in the name of the Secretary, Revenue Department, Government of Gujarat payable at Gandhinagar

or or before 31st January 1997. If the petitioner pays that amount in the aforesaid manner, the aforesaid parcel of land bearing survey No. 60 admeasuring 32 acres 17 gunthas or any part thereof acquired under the Land Acquisition Act, 1894 will be deemed to have been released from such acquisition and will be deemed to have been surrendered for the purposes of the present Act.

9. In the result, this petition is accepted. The order passed by the Deputy Collector at Rajkot on 30th August 1988 in Appeal No. 1 of 1988 at Annexure E to this petition as affirmed in revision by the decision rendered by the Gujarat Revenue Tribunal at Ahmedabad on 18th January 1991 in Revision application No. TEN.B.R. 39 OF 1988 at Annexure F to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.
